

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SUNWAY RESTAURANT)
CORPORATION,)
)
Petitioner,)
)
vs.) CASE NO. 92-3514RX
)
DEPARTMENT OF TRANSPORTATION,)
)
Respondent.)
_____)

FINAL ORDER

Petitioner, Sunway Restaurant Corporation, and Respondent, Department of Transportation, have entered into a stipulation regarding entry of a final order in this proceeding.

1. Under the Stipulation, this proceeding is limited to a challenge to the validity of an existing rule pursuant to Section 120.56, Florida Statutes, and the sole issue before the Division in this proceeding is whether the February 28, 1990 repeal of Rule 14-85.003(15)(b) was an invalid exercise of delegated legislative authority, as defined in Section 120.52(8)(a), Florida Statutes, for materially failing to follow the applicable rulemaking procedures set forth in Section 120.54(13)(b), Florida Statutes. Under the Stipulation, the challenge to the repeal of Rule 14-85.003(15)(b) pursuant to Section 120.54(4), Florida Statutes, has been withdrawn and all grounds for challenging the repeal of Rule 14-85.003(15)(b), other than those set forth above, have been withdrawn.

2. Upon consideration of the terms of the stipulation, it is determined that the stipulation should be approved and that the following stipulated findings of fact and conclusions of law should be entered.

FINDINGS OF FACT

3. The Respondent's February 28, 1990 repeal of Rule 14-85.003(15)(b) was not reflected in the Respondent's original Notice of Rulemaking and was a change in the rule that affected the substance of the rule. This change was not supported by the record of the public hearing held on the rule amendment nor written comments submitted to the Respondent, nor was it in response to a proposed objection by the Joint Administrative Procedures Committee.

CONCLUSIONS OF LAW

4. The February 28, 1990 repeal of Rule 14-85.003(15)(b) of the rule was an invalid exercise of delegated legislative authority, as defined in Section 120.52(8)(a), Florida Statutes as the repeal of paragraph (15)(b) was a change in the rule that did not meet the applicable rulemaking procedures of Section 120.54(13)(b), Florida Statutes.

ORDER

Based on the above, it is ORDERED:

1. That the Respondent's February 28, 1990 repeal of Rule 14-85.003(15)(b) was an invalid exercise of delegated legislative authority and is invalid.

2. That the repeal of Rule 14-85.003(15)(b) shall become void when the time for appeal of this Order has expired.

3. That this Order shall be without prejudice to the Respondent's ability to initiate rulemaking pursuant to Section 120.54, Florida Statutes, to repeal Rule 14-85.003(15)(b) and shall be without prejudice to Petitioner's ability to challenge such rulemaking.

4. The hearing scheduled for July 13, 1992 has been cancelled, and Burger King Corporation's Petition for Leave to Intervene is denied as moot.

DONE and ENTERED this 16th day of July, 1992, in Tallahassee, Florida.

MARY CLARK,
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of July, 1992.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULE OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.